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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) 44995 (P-6028)									
<p>I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]</p> <p>on _____</p> <p>Signature _____</p> <p>Typed or printed name _____</p>		Application Number 10/699,835	Filed November 4, 2003								
		First Named Inventor Nicholas R. Bachur Jr. et al.									
		Art Unit 2624	Examiner Bitar, Nancy								
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p>I am the</p> <table border="0"><tr><td><input type="checkbox"/> applicant/inventor.</td><td><u>Ronald S. Grubb</u> Signature</td></tr><tr><td><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</td><td><u>Ronald S. Grubb</u> Typed or printed name</td></tr><tr><td><input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>48,672</u></td><td><u>(202) 659-9076</u> Telephone number</td></tr><tr><td><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____</td><td><u>March 14, 2008</u> Date</td></tr></table> <p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.</p> <p><input checked="" type="checkbox"/> *Total of <u>1</u> forms are submitted.</p>				<input type="checkbox"/> applicant/inventor.	<u>Ronald S. Grubb</u> Signature	<input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)	<u>Ronald S. Grubb</u> Typed or printed name	<input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>48,672</u>	<u>(202) 659-9076</u> Telephone number	<input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____	<u>March 14, 2008</u> Date
<input type="checkbox"/> applicant/inventor.	<u>Ronald S. Grubb</u> Signature										
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<input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>48,672</u>	<u>(202) 659-9076</u> Telephone number										
<input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____	<u>March 14, 2008</u> Date										

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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44995 (P-6028)



PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Nicholas R. Bachur Jr. et al.

Serial No.: 10/699,835

Filed: November 4, 2003

For: Apparatus And Method For Using Optical
Mouse Engine To Determine Speed, Direction,
Position Of Scanned Device And To Obtain
Quantitative Or Qualitative Data From Same

Group Art Unit: 2624

Examiner: Bitar, Nancy

ARGUMENTS FOR CONSIDERATION FILED CONCURRENTLY
WITH PRE-APPEAL BRIEF REQUEST FOR REVIEW

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Sir:

In response to the final Office Action of October 16, 2007 and the Advisory Action of February 19, 2008, the Applicants request a two month extension of time, fee included, and submit the following arguments for consideration with the concurrently filed Pre-Appeal Brief Request For Review.

Remarks/Arguments begin on page 2 of this paper.

The extension fee and the fee for the Notice of Appeal are attached hereto. However, if the fees are missing or if any other fees are required, the Director is hereby authorized to charge the required fees to Deposit Account No. 18-2220.

Remarks/Arguments:

The Examiner has rejected claims 1-13 under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Publication No. 2005/0019945 of Groll et al. (hereinafter Groll) in view of U.S. Patent No. 6,765,555 of Wu et al. (hereinafter Wu).

Regarding claims 1 and 7, the Examiner points to Groll as describing the claimed invention with the exception of an optical sensor with an imaging array of pixels. That is, the Examiner points to Groll as disclosing a test strip reader having 1) an optical sensor, 2) a light source, a channel configured for receiving 3) a test strip comprising optically detected information, 4) a lens positioned with respect to the imaging array and the light source to focus light from the light source that has been reflected from the test strip onto the imaging array, the optical sensor being operable to determine change of direction data corresponding to the position of the test strip and 5) a processing device connected to the optical sensor for using the change of direction data to determine the position of the test strip, determining at least one of the optical absorptions of the information on the test strip, and diagnostic significance of the information on the test strip. The Examiner points to Wu as describing 6) an optical sensor with an imaging array of pixels, purportedly rendering obvious the invention as recited by the Applicants in claim 1, and a reading method thereof as recited by the Applicants in claim 7.

The Applicants assert that the Examiner is incorrectly applying the *construction tools* (of a test strip) with the *test strip being constructed* from the Groll reference, as disclosing the recited invention. For the reasons noted below, the Applicants assert that the construction tools disclosed in the Groll reference, even when disassembled and rearranged, do not disclose the test strip reader and method as recited by the Applicants. Further, even where disassembled and rearranged, no element or combination of elements of the Groll reference provides a processing device for using change of direction data to determine the position of a test strip, determining at least one of the optical absorptions of the information on the test strip, and diagnostic significance of the information on the test strip, as recited by the Applicants.

The Groll reference describes a system and method for the *construction of an electromechanical test strip*, which is etched to have a number of electrical traces and

connections, including encoded electrical connections for identifying the inserted strip, for use with an electric circuit of a reader when electrical connectivity is established via a number of contact pads (see Figs 2-3, and paragraph 71 (discussing prior art requiring manual id input by a user) and paragraphs 74-75 in regard to the system and method of Groll).

1) In regard to the optical sensor as recited by the Applicants, the Examiner points to the biosensor 401, and the manufacturing of the biosensor 401, of the Groll reference (see paragraph 58). However, the biosensor 401 of Groll is simply an electromechanical test strip, which is etched to have a number of electrical traces and connections for use with an electric circuit of a reader when electrical connectivity is established via a number of contact pads. The biosensor 401 does not comprise nor suggest any optical capabilities, either to optically read data or to optically communicate data, e.g., directional movement of strip, optical absorption, and/or diagnostic significance of the information on the test strip. That is, all *sensor information* of the biosensor 401 is communicated via electrical contacts only (as discussed below, biosensor ID may be detected via optical scanning – but not biosensor detected information). In regard to paragraph 58 of Groll, this simply describes an ablation apparatus 410 for *the manufacture of the biosensor 401* using masking/etching techniques.

The Examiner states that Groll describes non-contact data retrieval from the biosensor 401 at paragraph 51, and particularly points to the last line of paragraph 51 reciting “optical scanning techniques” as disclosing an optical sensor in Groll. The Applicants assert that the non-contact system and method of paragraph 51 is in regard to determining, in other ways, *connectivity between pads* DC, B1, B2 and C as alternate methods to determine the 8 possible numbers encoded on the test strip, essentially detecting the test strip. That is, the optical scanning is provided as one way to detect possibly visual pad connections and determine an encoded number of the test strip. However, the Applicants assert that this is simply in regard to detection of the biosensor, and not in regard to the communication of conditions detected by the biosensor to a reader, i.e., directional movement of strip, optical absorption, and/or diagnostic significance of the information on the test strip. As such, the biosensor 401 and ablation tools do not disclose an optical sensor as recited by the Applicants.

2) In regard to the light source as recited by the Applicants, the Examiner points to the laser light 412 of the manufacturing ablation apparatus 410. However, the ablation apparatus

410 is provided for constructing one component of the biosensor 401. That is, the laser 411 and laser light 412 are used in manufacturing one component of the biosensor, and are not part of a test strip or test strip reader into which the biosensor 401 would be placed.

3) In regard to a test strip comprising optically detected information as recited by the Applicants, the Examiner points to Groll paragraph 82. However, the biosensor 401 of Groll is simply an electromechanical test strip, which is etched to have a number of electrical traces and connections for use with an electric circuit of a reader when electrical connectivity is established via a number of contact pads. The biosensor 401 does not comprise nor suggest any optical capabilities, either to optically read data or to optically communicate data. That is, all *sensor information* of the biosensor 401 is communicated via electrical contacts only. As such, the biosensor 401 does not disclose a test strip as recited by the Applicants.

4) In regard a lens as recited by the Applicants, the Examiner again points to the construction tools, the lens of the ablation apparatus 410 of Groll, as describing a lens *positioned to focus light reflected from the test strip on the imaging array*. First, as noted above, 410 is a construction tool only. Second, the lens 416 of the ablation apparatus 410 of Groll is provided to shape the laser light 412 onto the substrate of the biosensor 401 for fabrication, and is not described as serving any function in regard to any light reflected back by the substrate of the biosensor 401, if any reflection occurs at all (see Groll Fig. 5). As such, the lens 416 does not disclose a lens as recited by the Applicants.

5) In regard to a processing device as recited by the Applicants, the Examiner points to contact pads of the biosensor, paragraph 86, and the ablation device, as disclosing such a processing device. However, there is no description or suggestion of the test meter or the ablation device of the Groll reference as determining change of direction data, or using change of direction data, as recited by the Applicants. More specifically, there is no disclosure in the Groll reference of the contact pads or any feature of the ablation device as providing a processing device for using change of direction data to determine the position of a test strip, determining at least one of the optical absorptions of the information on the test strip, and diagnostic significance of the information on the test strip as recited by the Applicants.

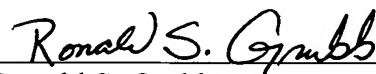
6) In regard to the imaging array of pixels as recited by the Applicants, the Examiner points to Wu as describing a passive optical mouse including a sensor array having a plurality of individual pixels arranged in a two-dimensional array, thereby disclosing an optical sensor with an imaging array of pixels. The Wu reference describes an ambient light, optical mouse 201, having a housing 203 and a lens 205. However, the Wu reference does not disclose the additional elements recited by the Applicants which are not disclosed or suggested by the Groll reference as noted above. Moreover, given that Groll is directed to making an electromechanical test strip, one skilled in the art would have had no reason to even look to a reference such as Wu.

Regarding the remaining dependent claims 2-6 and 8-13, the Applicants assert that the Groll and Wu references do not disclose or reasonably suggest each element as claimed by the Applicants in independent claims 1 and 7, from which claims 2-6 and 8-13 depend.

Conclusion

In view of the above, it is believed that there are at least one or more errors or omissions in the Examiner's rejections, and that claims 1-13 are in condition for allowance.

Respectfully submitted,



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